

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 13, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RYAN DALEY, an individual; and  
ISAAC CURRY, an individual, each  
on behalf of himself and all others  
similarly situated,

Plaintiffs,

v.

GREYSTAR REAL ESTATE  
PARTNERS LLC, a Delaware limited  
liability company; GREYSTAR  
MANAGEMENT SERVICES LP, a  
Delaware corporation; and GREYSTAR  
RS WEST LLC, a Delaware limited  
liability company,

Defendants.

No. 2:18-cv-00381-SMJ

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Before the Court is Magistrate Judge Dimke's July 2, 2020 Report and Recommendation, ECF No. 93, recommending that the Court (1) deny Defendant Greystar Management's Motion for Summary Judgment, ECF No. 49, (2) deny Defendant Grey Star Real Estate Partners, LLC's Motion for Summary Judgment, ECF No. 53, (3) grant Plaintiff's Motion to Continue Defendants' Motions for Summary Judgment, (4) grant Plaintiffs' Motion for Class Certification as to their

1 claims under Washington's Residential Landlord-Tenant Act (RLTA), (5) grant  
2 Plaintiffs' Motion to Extend Filing Deadline by One Day to File Reply in Support  
3 of Plaintiffs' Motion for Class Certification, ECF No. 74, (6) deny Defendant's  
4 request to strike page six of Plaintiffs' reply, ECF No. 77 at 3, (7) certify the putative  
5 class, (8) certify Plaintiffs as representatives of the class, (9) appoint Mr. Miller as  
6 class counsel pursuant to Federal Rule of Civil Procedure 23(g), and (10) set a  
7 schedule for filing of proposed class notices forms and any objections thereto.  
8 Defendants timely filed objections on July 16, 2020, ECF No. 94, and Plaintiffs  
9 filed a response on July 30, 2020, ECF No. 95. Defendants assert Plaintiffs' motion  
10 for class certification and for leave to file an untimely reply should be denied. ECF  
11 No. 94 at 2.

## 12 **BACKGROUND**

13 This putative class action in diversity arises from alleged violations of  
14 Washington's Residential Landlord-Tenant Act (RLTA), RCW 59.18 *et seq.* The  
15 Second Amended Complaint (the complaint) alleges Plaintiffs applied to rent units  
16 at the Bella Tess and The Homestead apartment complexes in Spokane Valley,  
17 Washington. ECF No. 35 at 9. The complaint further alleges Defendants Greystar  
18 Real Estate Partners, LLC (GREP), Greystar Management Services, L.P. (GMS),  
19 and Greystar RS West, LLC (GRSW)<sup>1</sup> own or manage these and other rental

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20 <sup>1</sup> GREP is a parent corporation with subsidiaries, including Defendants GMS and

1 properties in Washington and provide “uniform tenant screening disclosures to all  
2 prospective Washington tenants.” *Id.* at 11.

3 Plaintiffs allege Defendants violated the RLTA by charging a nonrefundable  
4 screening fee without first notifying the prospective tenant—either in writing or by  
5 posting—of: (1) the name and address of the specific consumer reporting agency  
6 used to obtain information about the prospective tenant in violation of Revised Code  
7 of Washington § 59.18.257(1)(a)(iii); and (2) whether the landlord would accept a  
8 comprehensive reusable tenant screening report as required by Revised Code of  
9 Washington § 59.18.257(1)(a)(iv), (2). *Id.* at 13–15. Plaintiffs also assert common  
10 law claims for unjust enrichment, claiming Defendants have been unjustly enriched  
11 by having received the benefits of obtaining information about prospective tenants  
12 as a result of the unlawfully assessed fee and retaining reports paid for by  
13 prospective tenants. *Id.* at 15. Plaintiffs seek actual damages in the amounts paid for  
14 tenant screening, statutory damages of \$100.00 per prospective tenant, declaratory  
15 judgment, pre-judgment and post-judgment interest, and attorney fees and costs. *Id.*  
16 at 18.

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GRSW. ECF No. 45 at 2.

1 Plaintiffs have moved to certify a class consisting of:

2 All persons; Who applied to rent any property in the state of  
3 Washington; Where the rental property, on the date of the application,  
4 was owned or managed by Defendant Greystar, or where Defendant  
5 Greystar was a “landlord” of the property, as defined by RCW  
6 59.18.030(14); Who paid any tenant screening fee to Defendant or its  
7 affiliates; between June 9, 2016, and the date that this class is certified.

8 ECF No. 55 at 6; ECF No. 35 at 16.

9 Defendants oppose class certification. ECF Nos. 64, 65. GREP and GMS  
10 have separately moved for summary judgment on the ground that they are  
11 improperly named defendants. Specifically, they contend that they do not meet the  
12 statutory definition of “landlord” under the RLTA and are not liable for unjust  
13 enrichment.<sup>2</sup> ECF Nos. 53, 55. Plaintiffs responded in opposition and separately  
14 moved to continue the summary judgment motions pursuant to Federal Rule of Civil  
15 Procedure 56(d), claiming Defendants have failed to produce discovery necessary  
16 to oppose summary judgment. ECF No. 57.

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19 <sup>2</sup> On March 8, 2019, GREP filed a motion to dismiss for lack of personal jurisdiction  
20 arguing it lacked minimum contacts to confer personal jurisdiction. ECF No. 18.  
The Court granted Plaintiffs leave to amend the complaint and dismissed the motion  
as moot. ECF No. 34. The Court subsequently denied GREP’s renewed motion to  
dismiss, ECF No. 36, concluding Plaintiffs had made the required *prima facie*  
showing of jurisdictional facts, which if true, would show purposeful availment and  
support the exercise of specific jurisdiction over GREP. ECF No. 45 at 12-13.

## LEGAL STANDARD

When a party files a timely objection to a Magistrate Judge's recommendation, the District Court must make a *de novo* determination regarding each portion of the recommendation to which the party objected. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(C). The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

## DISCUSSION

Defendants raise four general categories of objections. First, Defendants argue Plaintiffs should not have been permitted to file an untimely reply. ECF No. 94 at 11–13. Second, Defendants argue Plaintiff should not have been permitted to raise arguments regarding predominance for the first time in that reply. *Id.* at 13–14. Third, Defendants argue Judge Dimke incorrectly accepted Plaintiffs' reliance on the allegations in the Second Amended Complaint, rather than requiring that Plaintiffs file separate evidentiary support. *Id.* at 4–9. Finally, Defendants argue Plaintiff have not met the requirements to show counsel are competent to represent the class or that Plaintiffs meet the predominance and superiority requirements for class certification. *Id.* at 9–11; 15–21.

**A. Motion for Extension of Time and Motion to Strike as Untimely**

As to the first category of objection, the Court has conducted a *de novo* review and agrees with Judge Dimke’s recommendation that Plaintiffs’ motion to extend the filing deadline for their reply by one day should be granted and that Defendants’ request to strike that reply as untimely should be denied. Where a party seeks to extend a deadline that has passed, it must show “excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). The Court’s inquiry in such cases considers “(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)). Here, the one-day delay in filing a reply had no impact on the proceedings and caused no prejudice to Defendants, nor is there any indication that the mis-calendarling was in bad faith. As such, granting the motion for extension of time and considering the late-filed reply is appropriate.

**B. Motion to Strike New Arguments**

The Court has conducted a *de novo* review of the issue of whether Plaintiffs’ reply should be stricken for raising new arguments and agrees with the Report & Recommendation. District courts “need not consider arguments raised for the first

1 time in a reply brief.” *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (citing  
2 *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003)). However, numerous  
3 courts have recognized substantial overlap between the commonality preconditions  
4 of Rule 23(a)(2) and the predominance requirement of Rule 23(b)(3), though proof  
5 of commonality is “less rigorous” than the companion requirements of Rule  
6 23(b)(3). *Hanlon*, 150 F.3d at 1019; *see Wolin*, 617 F.3d at 1172; *Just Film, Inc. v.*  
7 *Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017) (assessing commonality and  
8 predominance in tandem).

9       When addressing commonality in their original motion for class certification,  
10 Plaintiffs argued that “the common question presented by the putative class  
11 members is whether Defendants regularly failed to provide the disclosures required  
12 by RCW 59.18.257.” ECF No. 54 at 14. Similarly, when Plaintiffs addressed  
13 predominance in their reply brief, they argued that “this is not a claim that will  
14 require factual inquiry of the individual class members because the claim rises or  
15 falls on the content of the disclosures that were provided to prospective tenants at  
16 the properties managed by the Defendants.” ECF No. 72 at 6. Both the commonality  
17 and predominance arguments, then, center on Defendants’ compliance or non-  
18 compliance with the disclosure requirements. Therefore, Plaintiffs were not raising  
19 new arguments in their reply brief, but instead mirroring arguments previously  
20 asserted in the original motion.

1 **C. Reliance on Allegations in Complaint**

2 The Court, having reviewed the issues in the Report & Recommendation *de*  
3 *novo*, agrees with the findings in the recommendation. Defendants assert Judge  
4 Dimke was incorrect to rely on the allegations in the Second Amended Complaint  
5 to find Plaintiffs had met the burden for class certification. ECF No. 94 at 4.

6 A plaintiff seeking class certification bears the burden of demonstrating  
7 “through evidentiary proof that the class meets the prerequisites of Rule 23(a).” *Sali*  
8 *v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1003–04 (9th Cir. 2018) (citing *In re*  
9 *Hyundai*, 881 F.3d 679, 690 (9th Cir 2018)). The standard is not a “mere pleading  
10 standard.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Rather “a party must  
11 not only ‘be prepared to prove that there are in fact sufficiently numerous parties,  
12 common questions of law or fact,’ typicality of claims or defenses, and adequacy  
13 of representation, as required by Rule 23(a),” but also “satisfy through evidentiary  
14 proof at least one of the provisions of Rule 23(b).” *Id.* (quoting *Wal-Mart Stores,*  
15 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011)).

16 Judge Dimke applied the appropriate “rigorous analysis” necessary for a  
17 determination of class certification. *Comcast Corp*, 569 U.S. at 33. While  
18 allegations in the complaint cannot be the sole basis for class certification, the Court  
19 may look to those allegations in making its determination. The Report and  
20 Recommendation looks beyond the allegations in Plaintiffs’ complaint to consider



1 Declarations made by the parties and other evidence. *See, e.g.*, ECF No. 93 at 28.  
2 The Court thus concludes Judge Dimke did not err in any reliance on the Plaintiffs’  
3 Second Amended Complaint.

4 **D. Objections to Substantive Findings and Recommendations**

5 **1. Plaintiffs’ Establishment of Fed. R. Civ. P. 23(a)(4)**

6 Federal Rule of Civil Procedure 23(a)(4) requires that “the representative  
7 parties will fairly and adequately protect the interests of the class.” This prerequisite  
8 applies to both the named class representatives and to class counsel. Defendants  
9 object that neither the class representatives, nor class counsel, are suitable  
10 representatives for the putative class. ECF No. 94 at 7, 9. The Court, having  
11 reviewed the issues in the Report & Recommendation *de novo*, agrees with the  
12 findings in the recommendation.

13 **a. Suitable Class Representatives**

14 Defendants object that Plaintiffs are not suitable representatives for the  
15 putative class. ECF No. 94 at 7. “To determine whether named plaintiffs will  
16 adequately represent a class, courts must resolve two questions: (1) do the named  
17 plaintiffs and their counsel have any conflicts of interest with other class  
18 members[;] and (2) will the named plaintiffs and their counsel prosecute the action  
19 vigorously on behalf of the class?” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,  
20 985 (9th Cir. 2011) (internal quotations omitted).

1       The named Plaintiffs represent they are “committed to vigorously litigating  
2 the matter.” ECF No. 35 at 16. Here, the parties have not raised any obvious issues  
3 suggesting any conflicts between the class representatives and the other class  
4 members. *See Tyus v. Wendy’s of Las Vegas Inc.*, 407 F. Supp. 3d 1088, 1099 (D.  
5 Nev. 2019) (noting “nothing in the record suggests a conflict”). The threshold for  
6 finding that class representatives adequately represent a class is low. *See, e.g., Local*  
7 *Joint Exec. Bd. Of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244  
8 F.3d 1152, 1162 (9th Cir. 2001); *In re Twitter Inc. Secs. Litig.*, 326 F.R.D. 619, 628  
9 (N.D. Cal. 2018). Here, the Court finds Plaintiffs have shown minimum suitability.

10                   **b.       Competent Counsel to Represent the Class**

11       Defendants also object to the recommendation finding that class counsel is  
12 adequate to represent the class. ECF No. 94 at 9. In determining the adequacy of  
13 class counsel, the factors the Court may consider include:

14           (i) the work counsel has done in identifying or investigating potential  
15 claims in the action; (ii) counsel’s experience in handling class actions,  
16 other complex litigation, and the types of claims asserted in the action;  
17 (iii) counsel’s knowledge of the applicable law; and (iv) the resources  
18 that counsel will commit to representing the class.

19 Fed. R. Civ. P. 23(g)(1)(A). Considering these factors, the Court agrees with the  
20 findings in the recommendation. This Court does not find persuasive Defendants’  
arguments that Plaintiffs’ counsel fell short in their briefings. Rather, as explained

1 above, Plaintiffs’ counsel has adequately demonstrated each requirement of class  
2 certification, reinforcing their competence as class counsel.

3 Further, Plaintiffs’ counsel are members of the bar in good standing. Mr.  
4 Miller, lead attorney for the putative class, has signed a declaration attesting that he  
5 is experienced and qualified counsel. ECF No. 56. Both Mr. Cameron and Mr.  
6 Miller, in the complaint, confirmed they do not “have any interests which might  
7 cause them not to vigorously pursue this claim.” ECF No. 35 at 17. Finally, this  
8 Court has previously appointed Mr. Miller and Mr. Cameron as class counsel in  
9 other, similar, class actions. *See, e.g., Fleming v. Greystar Mgmt. Servs. L.P., et al.*  
10 Case No. 2:15-cv-00174-SMJ.

## 11 **2. Substantive Predominance Arguments**

12 The Court, having reviewed the issues in the Report & Recommendation *de*  
13 *novo*, agrees with the findings in the recommendation. Defendants object that  
14 Plaintiffs have failed to establish predominance. ECF No. 94 at 15–20. The  
15 predominance requirement of Rule 23 “tests whether proposed classes are  
16 sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods. V.*  
17 *Windsor*, 521 U.S. 591, 623 (2011). This requirement is “far more demanding” than  
18 the commonality requirement. *Id.* at 623–624. Common questions, which satisfy  
19 the predominance requirement, are defined by the plaintiffs’ ability to make a *prima*  
20 *facie* showing using the same evidence. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.

1 Ct. 1036, 1045 (2016). The class members' RLTA claims all rest on a central  
2 question: whether Defendants failed to provide the required disclosures under  
3 RLTA. While there may not be a single website to find all the answers Plaintiffs  
4 seek, the inquiry is not so individualized as to undermine predominance. In fact, the  
5 common disclosures and the limited number of properties at issue creates many  
6 more common questions than divergent, individualized inquiries. Further, even if  
7 calculations of damages vary, this does not outweigh the common questions  
8 Plaintiffs' claims present. *Id.* Therefore, predominance is established here.

### 9 **3. Superiority**

10 The Court, having reviewed the issues in the Report & Recommendation *de*  
11 *novo*, agrees with the findings in the recommendation. Rule 23(b)(3) requires a  
12 putative class plaintiff show that the class action is the superior method for  
13 adjudicating the dispute. Defendants object that Plaintiffs have not made an  
14 adequate showing of superiority. ECF No. 94 at 20–21. Factors to be considered in  
15 weighing this question include the class members' individual interests, the extent  
16 and nature of the litigation, the desirability of concentrating the claims in a single  
17 suit, and the likely difficulties in managing the class action. Fed. R. Civ. P.  
18 23(b)(3)(A)–(D).

19 Here, the damages that could be recovered by an individual plaintiff are  
20 relatively small. Class members are likely largely unaware and uninformed of their

1 rights and are “comprised of a largely vulnerable population.” ECF No. 35 at 17.  
2 Despite Defendants’ contention that the class will be unmanageable, the ability to  
3 aggregate the class members’ small claims favors a class action. Therefore, the  
4 superiority requirement is met in this case.

### 5 CONCLUSION

6 After reviewing the Report and Recommendation, Defendants’ objections  
7 and Plaintiffs’ response, as well as the relevant legal authorities, and having  
8 conducted a *de novo* review of the issues raised in the objections, the Court finds  
9 the Magistrate Judge’s findings are correct. Therefore, the Court adopts the Report  
10 and Recommendation in its entirety.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 **1.** The Report and Recommendation, **ECF No. 93**, is **ADOPTED** in its  
13 entirety.
- 14 **2.** Defendant Greystar Management’s Motion for Summary Judgment,  
15 **ECF No. 49**, is **DENIED**.
- 16 **3.** Defendant Grey Star Real Estate Partners, LLC’s Motion for Summary  
17 Judgment, **ECF No. 53**, is **DENIED**.
- 18 **4.** Plaintiffs’ Motion to Continue Defendants’ Motion for Summary  
19 Judgment, **ECF No. 57**, is **GRANTED**.

1       **5.**     Plaintiffs’ Motion for Class Certification, **ECF No. 55**, is **GRANTED**  
2             as to the RLTA claims only.

3       **6.**     Plaintiffs’ Motion to Extend Filing Deadline by One Day to File Reply  
4             In Support of Plaintiffs’ Motion for Class Certification, **ECF No. 74**,  
5             is **GRANTED**.

6       **7.**     Defendants’ request to strike page 6 of Plaintiff’s reply, **ECF No. 77**  
7             **at 3**, is **DENIED**.

8       **8.**     The Court certifies the following class:

9             All persons; Who applied to rent any property in the state of  
10            Washington; Where the rental property, on the date of the  
11            application, was owned or managed by Defendant, or where  
12            Defendant was a “landlord” of the property, as defined by RCW  
              59.18.030(14); Who paid any tenant screening fee to Defendant  
              or its affiliates; between June 9, 2016, and the date that this class  
              is certified.

13       **9.**     The Court certifies Plaintiffs as representatives of the class.

14       **10.**    The Court appoints Mr. Miller as class counsel pursuant to Rule 23(g).

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